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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

June 22, 2016

10:04 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Final Pre-trial Conference Regarding the Rode Claims Objection
Matter.
Trial set for 08/15/2016, 8/16/2016, 8/17/2016 and 8/18/2016 at
9:00 AM on each day.

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A P P E A R A N C E S : (TELEPHONICALLY)

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RESIDENTIAL CAPITAL, LLC, ET AL.

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1 P R O C E E D I N G S

2 THE COURT: All right. This is Judge Glenn. We're
3 here in Residential Capital, number 12-12020. Today is the
4 date that was scheduled for the final pre-trial conference
5 regarding the Rode claims objection.

6 May I have the appearances please, first for Mr. Rode?

7 MS. NORA: Wendy Alison Nora appears for Mr. Rode.

8 Mr. Rode is on the telephone, Your Honor.

9 THE COURT: Okay. And for the Trust?

10 MS. RICHARDS: Your Honor, Erica Richards with
11 Morrison & Foerster is on for the ResCap Borrower Claims Trust.

12 THE COURT: All right. All right, Ms. Nora continues
13 to file or attempt to file in e-mail to my courtroom deputy, a
14 variety of pleadings including one just this morning, which is
15 captioned verified objection to proposed pre-trial order of the
16 ResCap Liquidating Trust and the ResCap Borrower Claims Trust,
17 purporting to have conferred with counsel for claimant.

18 Ms. Richards, do you have a copy of it?

19 MS. RICHARDS: I do, Your Honor. I did receive an
20 e-mail this morning.

21 THE COURT: Okay. And on June 10th, Ms. Nora filed
22 something that I consider to be mostly incomprehensible: a
23 motion to extend her time which she didn't believe that she
24 knew about of when the pre-trial order was due.

25 We had a pre-trial -- we had a case management

1 conference in this case on May 10th, 2016 at 2:05 p.m. And
2 there is a transcript of it. And I see from Ms. Nora's most
3 recent filing this morning, which attached a variety of e-mail
4 exchanges between Ms. Richards and Ms. Nora, it includes an
5 e-mail exchange from Friday June 10th, 2016, and it includes
6 the following e-mail that Ms. Richards sent to Ms. Nora on
7 Friday June 10th, 2016 at 4:39 p.m.: "We were surprised to see
8 the motion for an extension you just filed, and in particular
9 your uncertainty regarding the June 17th deadline, since you
10 never raised it with us. Attached is a transcript of the May
11 10th status conference during which the Court twice reiterated
12 the June 17th deadline and you raised no questions or concerns
13 regarding that date. I refer you to page 6 line 25 through
14 page 7 lines 7-8. Notwithstanding your request for an
15 extension of time in which to file a pre-trial order, please
16 let me know if the other proposed dates set forth in section 10
17 of the order are acceptable. Thank you, Erica."

18 The transcript from May 10th, 2016 couldn't be any
19 clearer about what the deadlines in this action were. So Ms.
20 Nora's contention that she didn't know what the deadlines were,
21 the transcript clearly shows her appearance, and I had to
22 painstakingly go through and repeatedly point out on the
23 transcript -- in the transcript on the record what the various
24 deadlines were in this action, which Ms. Nora has totally
25 disregarded, and which I find unacceptable.

1 In a recently filed declaration, Ms. Nora -- which
2 this wasn't in her motion for an extension of time -- indicates
3 that she's been ill. If Ms. Nora intends to rely on her
4 illness as a reason or justification for not complying, the
5 Court requires that she file no later than Friday at 5 p.m. New
6 York time, a declaration and affidavit from a medical care
7 professional setting forth an explanation for Ms. Nora's
8 inability to function as a lawyer in this court in accordance
9 with the schedule the Court has previously established.

10 The Court will permit the declaration or affidavit to
11 be filed under seal and a copy of the unredacted document needs
12 to be e-mailed to the Court by Friday at 5 p.m.

13 I find what Ms. Nora has set forth in her declaration
14 inconsistent with her filing today when she says -- let me find
15 it -- in an e-mail to Erica Richards on June 10th at 5:10 p.m.,
16 Ms. Nora said, "Erica, I would have discussed the situation
17 with you if I were not fearful of the chambers rule requiring
18 the extension to be sought five days before the date of the
19 required action. At least that is how I remember it. I have a
20 really bad cold and am in bed right now. I will respond more
21 thoroughly tomorrow."

22 I certainly didn't see attached any response from June
23 11th, but her statement to Erica Richards that she's in bed
24 with a cold is inconsistent with the declaration about her
25 illness that she's filed.

1 Obviously Ms. Nora recognized quite correctly that my
2 case management order required that any request for an
3 extension has to be sought five days before the deadline.

4 With respect to the dates, Ms. Nora is correct that
5 following the May 10th, 2016 hearing in which Ms. Nora
6 participated by telephone, there was no written order
7 established, but the Court -- altering the dates -- but the
8 Court reiterated over and over during that hearing what the
9 deadlines were. The June 17th deadline could not have been any
10 clearer, or the fact that the final pre-trial conference was
11 scheduled for now, 10 a.m. June 22nd.

12 So I find all of the excuses that Ms. Nora has set out
13 so far to be completely unacceptable.

14 The Trust quite correctly, by the deadline, June 17th,
15 submitted a proposed pre-trial order that included all of the
16 Trust's contentions and various other -- the other sections
17 required by this Court's case management order about what has
18 to go in -- there's a template as to what has to go into a
19 joint pre-trial conference order. Obviously the Trust couldn't
20 fill in what the claimant's counsel was required to do, but
21 still hasn't done to this date and time. So the Trust acted
22 quite correctly in not violating this Court's order by
23 submitting at least its proposed portion of the joint pre-trial
24 order.

25 I'm looking for some additional stuff, so just hold on

1 before anybody says anything else.

2 (Pause)

3 THE COURT: Ms. Nora, what do you want to say?

4 MS. NORA: Your Honor, I want to thank you for
5 allowing me the opportunity to provide medical information. I
6 actually first had a cold and I didn't realize that I had a flu
7 with some lung complications and asthmatic. I was hypoxic. I
8 agree with Your Honor that the filing of June 10th was somewhat
9 incomprehensible. I was having trouble thinking. My medical
10 evidence will establish the hypoxia.

11 I only recovered yesterday.

12 THE COURT: When can you exchange with Ms. Richards
13 the portions of the joint pre-trial order that you are required
14 to do? When can you do that?

15 MS. NORA: Your Honor, I was hoping, because I'm still
16 a little fragile right now, that I could have until the 1st of
17 July only because we do have the blessing of the August 15th
18 through 18th trial date, which I would implore the Court, and I
19 think you will be satisfied with the medical evidence, to allow
20 me to recover. And Ms. Richards provided me with their
21 proposal, the 3rd of June, if I'm recalling correctly, Your
22 Honor, expecting that we would have some time to go over all of
23 this. And so I would beg the Court to have until the 1st of
24 July.

25 THE COURT: Ms. Richards, do you want to be heard on

1 that?

2 MS. RICHARDS: I don't, Your Honor. July 1st would be
3 fine with us, if you're inclined to grant that extension.

4 THE COURT: All right. I will give Ms. Nora until 12
5 noon New York time, Friday July 1, 2016 to provide Ms. Richards
6 with the claimant's proposed sections for the joint pre-trial
7 conference order.

8 The transcript from May 10th, which is filed as ECF
9 9911, includes a lengthy explanation by me -- this is at pages
10 10, 11, 12, and 13 -- of what I expected Ms. Nora and Ms.
11 Richards to discuss in terms of scheduling items: motions in
12 limine, trial briefs, et cetera. Ms. Richards, has that
13 discussion taken place?

14 MS. RICHARDS: It has not, Your Honor. We set forth
15 our proposed dates in the trial order, and until we have a
16 discussion -- Ms. Nora had to see the dates on paper and had a
17 chance to consider them. She's been unavailable and
18 incapacitated, so we have not discussed those dates over the
19 phone.

20 THE COURT: Do you agree with that, Ms. Nora?

21 MS. NORA: Yes, generally, Your Honor, I do.

22 THE COURT: All right.

23 MS. NORA: I did try to reach Ms. Richards on the
24 17th. I'm not sure it would have been fruitful in view of my
25 condition. She got back to me as the e-mail -- well, actually

1 the transcribed voice mail shows. So I did make an attempt
2 despite my condition.

3 As to the 11th, Your Honor, I did not know how sick I
4 was on the 10th, and I was just incapacitated from the time I
5 went to bed on the 10th until I was able to communicate with
6 Ms. Richards on the 17th, although there were some other events
7 going on that I was trying to keep up with. That's because I'm
8 a sole practitioner. But my performance in all matters during
9 that time was appalling.

10 THE COURT: All right. I'm going to require that Ms.
11 Nora and Ms. Richards confer on or before July 8th -- Friday
12 July 8th at 12 noon with regard to all of the scheduling issues
13 that are discussed in the May 10th transcript. I'm not going
14 to repeat all of that. Don't wait until July 8th, Ms. Nora.
15 That's the deadline for -- I want you to -- it's a week after
16 you have to provide Ms. Richards with your proposed sections of
17 the pre-trial order.

18 I'm mindful of the 4th of July holiday, and I don't
19 want to require people to work over the 4th of July holiday.
20 So I'm giving you until Friday July 8th to confer and try to
21 agree on the schedule of the items that are discussed. They're
22 set out in the transcript. I went through it fairly
23 painstakingly as to what the Court requires before the trial.

24 (Pause)

25 THE COURT: Let me make a couple of points clear. It

1 should be clear to everybody, but let me reiterate that the
2 pre-trial order has to specifically identify and list each
3 witness, lay or expert, that's going to be called as a witness
4 by either side during trial. If witnesses are not identified
5 they will not be testifying at the trial. I think that's clear
6 from my pre-trial order.

7 With respect to the trial, I previously scheduled the
8 trial for August 15th, 16th, 17th, and 18th, 2016, beginning at
9 9 a.m. each day. That trial schedule remains in place.

10 Because -- and I explained at the May 10th hearing --
11 because of other matters on my calendar, was not able to
12 schedule an earlier trial, but with the unfortunate fact that I
13 don't have a pre-trial order for this pre-trial conference,
14 there is enough time to try and hold to the schedule.

15 Ms. Richards, the joint pre-trial order needs to be
16 submitted to the Court by Tuesday July 12th at 10 a.m. So let
17 me just go back again.

18 Ms. Nora is to provide Ms. Richards with her proposed
19 sections of the pre-trial order by July 1st at noon. I don't
20 take separate pre-trial orders. It needs to be a single pre-
21 trial order. To the extent the parties can stipulate, they
22 need to stipulate. If parties refuse to stipulate to facts
23 that cannot reasonably be controverted that are relevant and
24 material to the issues in dispute, I reserve the right at
25 trial, if a party is required to call a witness and take trial

1 time to put in evidence of what could not fairly be contested,
2 to assess costs and possible sanctions. So I expect the
3 parties to proceed in good faith.

4 I know there are disputed issues of fact, and I don't
5 expect people to stipulate to those. But there are many
6 undisputed issues of fact here, and that goes to issues such as
7 authentication of exhibits. I'll rule on any fair objection,
8 but I don't -- if I conclude that objections are not well-
9 taken, they're without any reasonable basis in fact or law, I
10 reserve the right to take appropriate action.

11 But so Ms. Nora, you give Ms. Richards by noon on July
12 1st your sections. The two of you are to confer no later than
13 July 8th to try and work out the remaining scheduling items and
14 any differences with respect to the pre-trial order. I expect
15 that I will receive a proposed joint pre-trial conference order
16 on or before 10 a.m. Tuesday July 12th. Do you understand that
17 Ms. Nora?

18 MS. NORA: I do, Your Honor. Thank you.

19 THE COURT: Ms. Richards, do you understand that?

20 MS. RICHARDS: I do, Your Honor. Thank you.

21 THE COURT: Okay. And I will try to give the two of
22 you the ability to agree on the various dates: motions in
23 limine, exchanging exhibits, all of -- everything that's
24 needed. I explained at the May 10th hearing, for example,
25 motions in limine are hard to do unless you know what exhibits

1 each side's proposing to use. Either side doesn't know whether
2 they can file a motion in limine to exclude exhibits if they
3 don't know what the proposed exhibits are. So what has to --
4 the exhibits have to be identified with specificity.

5 The claimant uses numbers: 1, 2, 3, 4, 5, et cetera.
6 The Trust uses letters: A, B, C, et cetera. Every exhibit
7 must be clearly identified. Just simply saying all documents
8 produced by one party or another, is totally unacceptable. So
9 every exhibit needs to be specifically identified in the
10 proposed pre-trial order. I think the form of the order is
11 self-explanatory about that.

12 And Ms. Nora has represented at least one other party
13 in a trial before this Court, and she should be aware of it
14 from that. Ms. Nora, anything else you want to raise today?

15 MS. NORA: Well, I want to thank you and Ms. Richards
16 for the consideration that has been given. And I do apologize
17 for expecting Ms. Richards to provide me with a scheduling
18 order after the 10th. My notes were not accurate, because I
19 had become reliant on her good performance. And I apologize
20 for that as well.

21 THE COURT: All right. I need to give you one more
22 date, and that's for the final pre-trial conference.

23 MS. NORA: Thank you.

24 (Pause)

25 THE COURT: All right. The final pre-trial conference

1 will be on Monday July 18th at 3 p.m. And both sides can
2 participate by telephone. So it's --

3 MS. NORA: Your Honor, may I ask for another date? I
4 have a contested confirmation hearing in a Chapter 13 before
5 the Western District of Wisconsin on the 18th of July.

6 THE COURT: Okay. Tuesday July 19th at 3 o'clock New
7 York time by telephone.

8 Ms. Richards does that work for you?

9 MS. RICHARDS: It does, Your Honor. I suppose the
10 only thing I'd like to raise at this point is the dates that
11 you had initially proposed for exchanging witness statements
12 was beginning on July 18th because that --

13 THE COURT: I'm sorry, I'm having a little difficulty
14 hearing you, so go ahead again.

15 MS. RICHARDS: Apologies. So the dates that we had
16 initially proposed for the various scheduling items you
17 suggested, including witness statements and exhibit lists so
18 that we can work on motions in limine in advance of trial, were
19 beginning around July 18th, and so --

20 THE COURT: Okay.

21 MS. RICHARDS: -- if we won't even be having the pre-
22 trial conference before that date, I just wanted to confirm
23 with you and with Ms. Nora that we should begin preparing for
24 trial now and preparing those items, even though the order may
25 not be entered until mid-July, that both sides should be

1 starting to prepare for a trial in mid-August, and that
2 includes preparing all those items, even though we don't have
3 the deadlines for them set yet.

4 THE COURT: That's right. I ordinarily would not have
5 motions in limine when the final pre-trial conference has
6 occurred. So I don't think -- the schedule ought to be set
7 forth in the proposed pre-trial -- in the joint pre-trial
8 conference order. But not everything is going to be resolved.

9 Certainly each side's exhibits that they propose to
10 use have to be listed in the pre-trial order, and that's by
11 July 12th. I want -- because I have a vacation planned
12 starting a few days later in July until the beginning of
13 August, I wanted to have the joint pre-trial conference -- the
14 final pre-trial conference before I leave on vacation, and
15 that's why we're going to go ahead on July 19th at 3 o'clock.

16 The whole schedule ought to be set out in the proposed
17 joint pre-trial order. I'll tell you for sure whether the
18 schedule is acceptable to me.

19 MS. RICHARDS: Great. Thank you, Your Honor.

20 THE COURT: Okay. Anything else, Ms. Nora?

21 MS. NORA: No, Your Honor, thank you.

22 THE COURT: All right. The Court's in recess until 3
23 o'clock.

24 (Whereupon these proceedings were concluded at 10:32 AM)

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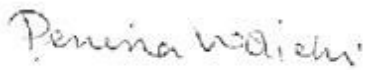
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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.



PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: June 23, 2016

June 22, 2016

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